

U. S. CIRCUIT COURT. EASTERN DISTRICT OF  
PENNSYLVANIA

Eldridge R. Johnson	)	Oct. Seess. 1900
versus	)	No. 25
National Gramophone Corp.)		In Equity

RECORD  
1900

COPY

from

THE NATIONAL ARCHIVES

Record Group No. 21

U.S. Circuit Court  
Eastern District of Pennsylvania  
Equity No. 25  
October session 1900



CIRCUIT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania.

October Sessions, 1900, No. 15

In Equity.

Eldridge R. Johnson,

Complainant.

vs.

National Gramophone Corporation,  
Defendant.

N O T I C E .

Please take notice that at a term of court to be held in the Post-office Building, 9th. & Chestnut Sts., Philadelphia, Pa., on the twelfth day of November, 1900, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, motion will be made by counsel for complainant, Eldridge R. Johnson, on the Bill of Complaint herein and on the affidavits of Eldridge R. Johnson, Leon F. Douglas and Oliver Jones, copies of which are herewith served upon you, for a Preliminary Injunction to restrain the defendant until final hearing from doing the acts complained of in the said Bill of Complaint,



according to the prayers of the said Bill.

*Home Petition*  
*Howard W. Rogers*  
Solicitors and of Counsel for Compl't.

To

National Gramophone corporation,

Regular Place of Business in Philadelphia,

#13 N.Ninth Street,

November 7, 1900.



CIRCUIT COURT OF THE UNITED STATES  
For the Eastern District of Pennsylvania.

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October Sessions, 1900, No.

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In Equity.

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Eldridge R. Johnson,

Complainant.

vs.

National Gramophone Corporation,

Defendant.

To the Honorable the Judges of the Circuit Court  
of the United States for the Eastern District of Pennsylvania:-

Eldridge R. Johnson, a citizen of the State of Pennsylvania, and resident of the City of Philadelphia, State of Pennsylvania, brings this Bill of Complaint against the National Gramophone Corporation, a corporation organized and existing under the laws of the State of New York, a citizen of the State of New York, having its principal office and place of business in the City of New York, State of New York, and having an office and a regular established place of business in the City of Philadelphia, State of Pennsylvania, and doing business in the said city of Philadelphia, within the Eastern District of Pennsylvania.



And thereupon your orator complains and says:-

1. That in the year 1896, your orator, who was at that time engaged at No. 108 North Front Street, Camden, New Jersey, in the manufacture of general and special machinery and machine parts of various descriptions and kinds began the manufacture, in connection with his general business, of motors for talking machines of the style known as gramophones, and of other devices and parts relating to gramophones, his principal customer at that time being the Berliner Gramophone Company, which had its offices then at No's. 1026 and 1028 Filbert Street, in the City of Philadelphia, State of Pennsylvania. That in the year 1896 he also began experiments looking to the improvement and perfection of the gramophone, and gramophone records and parts, and that since that time he has invented and patented many valuable improvements relative to the gramophone, and is now the owner of a number of valuable patents for the same in the United States and foreign countries.

2. That from time to time as he perfected his said various improvements he embodied many of the same in the commercial gramophones which he was manufacturing for the Berliner Gramophone Company, and other customers, and that the gramophone as constructed and manufactured by him, with his numerous patented improvements, became the standard commercial gramophone, and that since the Berliner Gramophone Company started in business in 1896, he has manufactured nearly all their Gramophones and all the gramophones which have been manufactured for the various gramophone companies in foreign countries, in all to the extent of many ~~hundreds of~~ thousands. Your orator's prin-



✓  
cipal customer in this country has been the Berliner Gramophone Company, whose exclusive selling agent under contract dated October 10th, 1896, was Frank Seaman, of New York City, New York. That recently the said Berliner Gramophone Company has been enjoined by the United States Circuit Court, for the Western District of Virginia, in a suit by Frank Seaman against the Berliner Gramophone Company from manufacturing, selling or dealing in, <sup>gramophones, gramophones</sup> records <sup>or goods</sup> except under certain conditions set forth in the decree of the said Court, dated June 25, 1900, which decree restrains the said Berliner Gramophone Company temporarily from doing business. That your orator has among his customers for gramophones, besides the said Berliner Gramophone Company, many other parties concerns and corporations in this country and abroad, and has acquired a wide reputation and demand for his improved machines and records.

3. Your orator further avers that he has recently by reason of the growing and increasing demand for his said improved machines and improved records enlarged and extended his factory and provided increased facilities for manufacturing and selling talking machines and records and has been recently conducting this branch of his business under the name and style of the Consolidated Talking Machine Company, in connection with his own name, and has extensively and largely advertised his said talking machine and records, for which, as hereinbefore stated, he has created a large demand, and for which there would be a very much larger and increasing demand were it not for the



unjust and unlawful acts of this defendant hereinafter complained of.

4. Your orator further avers and shows that he has expended over a hundred thousand dollars in his experiments, plant, machines and laboratory for manufacturing gramophones and records, and has now at his new factory and laboratory at 120 North Front Street, Camden, New Jersey, facilities for supplying the very large market which exists for this class of goods, for which he has built up a wide and enviable reputation. Your orator has in his employ a large working force devoted to the manufacture and sale of gramophones, gramophone records and goods, and is obliged by reason of the character of the work to pay high salaries and wages to the skilled labor and talent which he necessarily must employ in the conduct of the said business.

5. Your orator further avers and shows that among the United States patents which he has obtained for his improvements in gramophones, are the following:-

No. 601,198, March 22, 1898;

No. 624,625, May 9, 1899;

No. 634,944, October 17, 1899;

No. 650,843, June 5, 1900;

No. 655,556, August 7, 1900;

No. 655,557, August 7, 1900;

And your orator has pending in the United States Patent Office about thirty or more applications for patents for additional improvements relating to Gramophones and Talking Machines generally.



6. Your orator further avers unto your Honors that the defendant, the National Gramophone Corporation, which has an office at 874 Broadway, New York City, New York, was incorporated under the laws of the State of New York, on or about March, 1899, and that since that time it has been engaged in the sale of machines of the gramophone type, and other talking machines, and, as your orator is informed and believes, is still so engaged, but to what extent your orator is not informed. Your orator, however, is informed and avers that the talking machines and talking machine records now sold by the defendant are manufactured by the Universal Talking Machine Company, of New York City, and that records are also pressed for the defendant by a company known as the Burt Company, of Milbourne, New Jersey, and avers that the talking Machine goods, both the machines and records which the said defendant corporation is advertising for sale and putting upon the market are very inferior goods, and very inferior to the talking machines and records of your orator.

7. Your orator further avers and shows that at one time the defendant, the National Gramophone Corporation, dealt in and sold the gramophones manufactured by your orator in large quantities, the said defendant being at that time the principal selling agent of the said Frank Seaman, the agent of the Berliner Gramophone Company, as hereinbefore set forth. That the said defendant is not now selling gramophones manufactured for the said Berliner Company, and has not received any from the said Berliner Company.



since about May or June, 1900, but is now selling, as hereinafter set forth, a disc talking machine manufactured by the Universal Talking Machine Company, and styles by it the "Zonophone."

8. Your orator further avers and shows that the said defendant Company has copied, among other things, without license or right, and is selling in connection with its gramophones or "Zonophones", so called, your orator's improved sound box patented to your orator by Letters Patent of the United States No. 655,556 and No. 655,557, hereinbefore noted, in infringement and in violation of your orator's rights in the premises, for which infringement your orator has already brought suit against this defendant corporation, in this Honorable Court, which suit is now pending.

9. Your orator further avers that infringement suits are now pending in the United States Circuit Court for the Southern District of New York, and the Eastern District of Pennsylvania, brought by the said Berliner Gramophone Company, and the United States Gramophone Company, against this defendant, the National Gramophone Corporation, and against the Universal Talking Machine Company, to restrain the said defendant from infringing the Berliner patents for improvements relating to gramophones, which patents are alleged to be infringed by the said defendants by the manufacture and sale of the disc talking machine records manufactured and sold by them, and common-



ly known as the "Zonophone" and "Zonophone" records; which said suits, as your orator is informed and believes, have recently been brought, and are still undecided. That while no suit has been brought against your orator by the said Berliner Gramophone Company, or the United States Gramophone Company, for any alleged infringement of the said Berliner patents, your orator, in the event of any final adjudication in the said suits sustaining the validity of the said Berliner patents will at all times be ready and willing to recognize the same, and to abide thereby, should the gramophones he manufactures and sells come within the scope of any such decision.

10. That this present suit is a suit of a civil nature in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of Two thousand dollars, and arising under the laws of the United States in accordance with the provisions and within the intent and meaning of the Act of Congress in such cases made and provided.

11. And your orator further avers and shows unto your Honors that the said defendant, the said National Gramophone Corporation, which claims to own or control certain patents relating to talking machines, is not the owner and does not control any broad patents or any patent which your orator infringes; that if the defendant owns or controls any patents they are only for minor details of talking machine parts, which constructions your orator does not use.

12. That your orator further shows that the said



defendant has endeavored, and is now endeavoring to break up and destroy the gramophone business of your orator, and to drive him out of the gramophone business, and against public policy, to suppress the competition which your orator's manufacture and sale of gramophones and gramophone records and goods occasions by the publication in numerous monthly magazines, and in other publications, and by the circulation among the customers and agents of your orator of circulars and letters addressed and mailed to said customers and agents, and by verbal threats and warnings, in and by which said customers and agents are falsely and maliciously informed that the gramophones and gramophone records of your orator's manufacture, and of other "parties who have attempted to trade in the gramophones," and handled by said customers and agents, are by innuendo and misstatements stated to be infringements upon patents owned and controlled by the said National Gramophone Corporation, and warning all dealers and purchasers not to purchase disc talking machines of your orator or of other manufacturers, falsely alleging that they are infringements of the patents owned or controlled by the said National Gramophone Corporation, and threatening suit against all, customers, dealers and agents who purchase gramophones from other manufacturers, including your orator. Copies of some of which said notices are hereto annexed, marked Exhibits "A" "B" "C" "D" "E" "F" "G".

Your orator further avers and shows that he is the only manufacturer of gramophones or disc talking machines at the present time in this country, with the exception of the Universal Talking Machine Company, which Company manufact-



ures for the said defendant, and the American Graphophone Company, which manufactures in a small way a few cheap toy machines of the disc type, which two last mentioned companies are conspiring against your orator with said defendant to destroy his said business. That the said unlawful warnings, advertisements and circulars of the defendant are therefore directed directly against your orator and addressed to his customers and agents.

13. Your orator further avers that the said notices of warning to your orator's customers and agents falsely and maliciously state by innuendo that the gramophone and all parties manufacturing and using the same have been enjoined by the United States Circuit Court, which is not the fact. The fact is that the Berliner Gramophone Company alone has been enjoined temporarily, at the instance of Frank Seaman in the said Virginia suit, hereinbefore noted, from continuing an alleged breach of contract.

14. Your orator further avers that the only patent with which the said defendant can claim to have any connection which has been before the United States Courts in any suit against the gramophone is Letters Patent of the United States No. 341,214, dated the fourth day of May, 1886, in the suit of the American Graphophone Company against Frank Seaman, and the National Gramophone Company, reported in 92 Federal Reporter, pg. 364, in which case the United States Circuit Court of Appeals for the second Circuit, reversing the decision of the lower court, held that a Preliminary Injunction could not lie against the gramophone as there had never been any prior adjudication to warrant it. The said



suit is still pending, and has not yet come to final hearing.

15. Your orator further avers that subsequent to the date of the said decision of the United States Circuit Court of Appeals the said National Gramophone Corporation, the defendant herein, being in collusion with the complainant, the American Graphophone Company, did cause a confessed decree to be entered against it in the said suit, without any hearing upon the merits of the case whatsoever, for the purpose, among other things, of trying to assist the cause of the American Graphophone Company against the gramophone, and against this complainant. No decree has been entered in the said case against the other defendant, Frank Seaman.

16. Your orator further avers and shows unto your Honors that the business of the talking machine trade is mainly divided into two seasons, that the principal season, to wit, the season which included and embraces the Christmas trade, is now on, and that the defendant, realizing this fact, knows that if by its advertisements and warnings it can intimidate your orator's customers and agents from purchasing your orator's goods at this particular time of the season, it will divert to itself practically the entire season's trade; if it can continue the said advertisements and warnings a few weeks longer its object will have been attained, as far as this season is concerned. Every day at this time that these advertisements and warnings of the defendant are continued means additional irreparable loss to your orator.



17. Your orator further avers that the said notices falsely and maliciously by innuendo attempt to lead the public to believe that the Letters Patent of the afore-said defendant owned or controlled by it have been sustained in a suit or suits against the gramophone in the United States Circuit Court, whereas the fact is that the gramophone has never been adjudged in any patent suit at the instance of the said defendant, or any other party, to infringe any patent owned or controlled by the defendant, or by any other party. That the said defendant by the said circulars and advertisements falsely and maliciously informs your orator's customers and agents that the "Zonophone", the talking machine advertised by the defendant, is the only legitimate talking machine on the market, and threatens that your orator's customers will be prosecuted.

18. Your orator further shows and avers that among other malicious circulars and advertisements published by the said defendant, <sup>is</sup> a circular letter dated Oct. 26, 1900, printed on the letter head of the National Gramophone Corporation, and signed "National Gram-c-phone Corporation, by O. D. LaDow, Secretary," addressed "To The Trade," and mailed among others to your orator's customers and agents, slandering and vilifying your orator, and containing numerous false and malicious statements for the purpose of damaging and injuring your orator, and his said business, and the continued circulation of which will, unless enjoined by this Honorable Court, irreparably damage and injure your orator, which said circular letter is ready in court to be produced, a copy of which is hereto annexed, marked "Exhibit G."



19. Your orator further shows and avers that the said defendant has never brought suit on its patents, if any it has, against your orator or his customers or agents, or against any parties whatsoever, and your orator believes and avers that it has no intention of doing so, but is merely circulating these false and malicious threats among the customers and agents of your orator for the purpose of injuring and destroying your orator's business, and, if possible, of acquiring to itself the business of your orator. That the defendant has continued for many months last past the publication and circulation of said threats, hereinbefore referred to, addressed to the customers and agents of your orator for the purpose of breaking up your orator's business in gramophones.

20. Your orator avers that the threats of suit made against the customers and agents of your orator are not made in good faith, or with any intention of instituting suit against any such agents or customers, or against your orator as the manufacturer. That the said defendant although it has issued many of said false and malicious threats through the mediums aforesaid, it has not specified any particular patent or patents which it owns or controls, and which it alleges are infringed by the gramophone.

21. Your orator further avers that the threats of the defendant Company against the customers and agents of your orator are rendered the more effective and harmful to the business of your orator in that it has been stated by innuendo by the said National Gramophone Corporation that your



crator will endeavor to evade any guarantee which may be given by your orator to his customers and agents to protect them against suits for infringements which may be brought by the defendant.

22. And your orator further shows unto your Honors that the business of your orator has been, and is being greatly injured and tends to become destroyed by the said unlawful acts of the said defendant corporation, and that unless the said defendant is restrained by an injunction of this Honorable Court from continuing the said unlawful acts, and from circulating false and malicious statements, the said business of your orator will be irreparably injured and destroyed, and that on account of the character of said acts, done and threatened to be done, your orator can have no relief at law.

Forasmuch as your orator can have no adequate relief except in this Honorable Court, and as said proceedings are contrary to equity, to the end, therefore, that the defendant may show, if it can, why your orator should not have the relief hereby prayed, and may to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the premises, matters and things hereinbefore stated, and charged as fully and particularly as if severally and separately interrogated as to each of said matters, as if the same were hereinafter repeated:- answer under oath, however, being expressly waived.

And your orator prays that the said defendant, its servants, agents, attorneys, workmen, and each and every of



them, may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this Honorable Court, from directly, or indirectly, continuing the aforesaid unlawful and illegal acts, and from continuing to write, publish, deliver, distribute or circulate the advertisements, letters or circulars hereinbefore complained of, or any advertisements, letters or circulars containing intimidating threats or any warnings against your orator, or his customers, or against persons selling or using gramophones manufactured by your orator.

Your orator further prays that the said defendant, its servants, agents, attorneys, workmen, and each and every of them, may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this Honorable Court from directly or indirectly continuing the publications of misleading notices or warnings that the manufacture and sale of the gramophone has been enjoined, or that it has been abandoned.

And your orator further prays that the defendant, its servants, agents, attorneys and workmen, and each and every of them, may be perpetually restrained and enjoined from further advertising directly, or indirectly, that the "Zonophone" is the only legitimate talking machine using disc records.

That the defendant be restrained from publishing notices or warnings couched in language which tends to misrepresent the facts as to the legal standing of the gramophone, and gramophone records, and which tend to mislead



the public into the belief that the gramophone has been decided by the United States Circuit Courts to be an infringement of any patent owned or controlled by the defendant corporation until the United States Courts shall so decide, after final hearing.

And your orator further prays that a provisional or preliminary injunction issue during the pendency of this suit, restraining the said defendant, as above prayed.

And your orator further prays that the said defendant may be compelled by a decree of this Court to account for and pay over to your orator the damages sustained by your orator by reason of the acts of the defendant hereinbefore complained of, and to also pay the costs of this suit, and that your orator may have such other and further relief as to this Honorable Court shall seem meet, and as shall be agreeable to equity.

May it please your Honors to grant unto your orator not only writs of injunction conformable to the prayers of this Bill, but also the writ of subpoena ad respondendum issuing out of and under the seal of this Honorable Court directed to the said defendant, the National Gramophone Corporation, commanding it at a time certain therein to be named, and under a certain penalty therein to be limited, to be and appear before this Honorable Court, then and there to answer unto this Bill of Complaint, and to conform and abide by such order and decree in the premises as to this Honor-



able Court shall seem meet and may be required by the principles of equity and good conscience.

And your orator will ever pray, etc.

*Edwidge R. Johnson*

*Thomas W. Rogers*  
*Thomas W. Rogers*

Solicitors and of Counsel for  
Complainant.



Commonwealth of Pennsylvania :  
: SS  
City and County of Philadelphia : :

Elbridge R. Johnson, the complainant above named,  
being duly sworn deposes and says that the foregoing bill  
of complaint is true, except, as to matters stated upon  
information and belief, and that as to those matters he  
believes it to be true.

*Elbridge R. Johnson*

Sworn and subscribed before me this *Sixth* day  
of November, 1900

*G. A. Schwab,*  
*Notary Public*



Exhibit A

Nov. 1900.

HARPER'S MAGAZINE ADVERTISER

Nov. 1900

## Special Offer to 1000 subscribers of Harper's Magazine

\$20 *Zon-o-phone*  
(Substituted for our Gram-o-phone  
which is abandoned)

### Sent on Approval without Deposit

Science, experience and a happy accident have revealed to us a new and wonderful principle of recording, whereby sound waves are now reproduced which up to three months ago were entirely lost.

THE NEW ZON-O-PHONE RECORDS ARE READY, and so is our new machine to reproduce the records—the new and beautiful Zon-o-phone substituted for the old Gram-o-phone. The new outfit captivates all who hear its results, and experts are amazed at its revelations. We want you to realize that soprano solos executed with operatic trills and cadences; the superb band work of Herbert; the even balance of our peerless quartettes; the shrill, swift vibrations of the piccolo, etc., etc., are all faithfully rendered by this wonderful discovery. Yours on trial for the asking, with no other obligations than to first give the Zon-o-phone and its wondrous records a fair trial at your own fireside, and then to return to us in 24 hours if you are not satisfied.

CONDITIONS: Limited to one thousand as above. Goods ours until returned or paid for. Offer limited to territory east of the Rocky Mountains. The outfit—consisting of a Zon-o-phone, complete, with horn, sound box, 200 needles, four Zon-o-phone records—for \$20 cash, or on installments as agreed upon, small payment down and monthly thereafter.

#### Warning

The public generally is warned against all attempts to revive or sell the abandoned Gram-o-phone, which has been enjoined by the U. S. Circuit Court. The Zon-o-phone is the only legitimate talking machine using disc records, and our machines and records are protected by the allied patents of the four great talking machine corporations.



For Sale by dealers everywhere

**NATIONAL GRAM-O-PHONE CORPORATION**

874 BROADWAY  
NEW YORK

#### BRANCHES

Boston, 178 Tremont Street  
Philadelphia, 13 North Ninth Street

Providence, 457 Westminster Street  
Chicago, 161 State Street

Cincinnati, 21 and 23 West Fifth Street



Exhibit B.

Munsey Magazine Oct. 1900.

good

# Zon-o-phone

## SUBSTITUTED FOR OUR GRAM-O-PHONE

Our new creation, superior to every known type of talking machines—including our former product, the Gram-o-phone, which we have abandoned, including its name—combines all points of advantage suggested by years of study and experience; reinforced by the allied patents of the four great talking machine corporations.

**Warning.**—Parties who have recently attempted to trade in the Gram-o-phone, and thus reap the advantage of our advertising and prestige have been enjoined by the United States Court. All others are warned accordingly as to the purchase and sale of machines bearing that name. The Zon-o-phone is the only legitimate disc talking machine on the market, and infringers will be prosecuted.

ON SALE EVERYWHERE.

National Gram-o-phone Corporation, 874 Broadway, New York.

In answering any advertisement on this page it is desirable that you mention MUNSEY'S MAGAZINE.

Munsey Mag. Oct. 1900.



Exhibit C.

Postal Card addressed to and  
received by Mr. John H. Frank, Attorney,  
Connecticut - Portsmouth, Oct. 11, 1900.

Commonwealth of Pennsylvania )  
City and County of Philadelphia.) ss:

Horace Sheble, of the City of Philadelphia, State  
of Pennsylvania, being duly sworn deposes a

### TO THE TRADE.

We wish to warn the trade against efforts that may be made to market the Gram-o-phone, which we have abandoned, including its name. Parties who have attempted to place the Gram-o-phone upon the market were enjoined in June last from doing so by order of the U. S. Circuit Court.

Dealers are hereby warned as to the purchase and sale of disc machines which infringe our patents. The Zon-o-phone is the only legitimate disc talking machine; it is protected by the allied patents of the American Graphophone Company, the Columbia Phonograph Company, the National Gram-o-phone Corporation, the Universal Talking Machine Company.

NATIONAL GRAM-O-PHONE CORPORATION,  
874 BROADWAY, NEW YORK, N. Y.

October 10th, 1900.

BRANCHES:  
BOSTON, 178 Tremont Street; PROVIDENCE, 457 Westminster Street; PHILADELPHIA,  
13 North Ninth Street; CHICAGO, 161 State Street; CINCINNATI, 21 and 23 W. Fifth Street;  
ALBANY, N. Y., 466 Broadway; DENVER, COLO. 1509 Tremont Street.



Exhibit D.

Saturday Evening Post - Oct. 20 - 1900.

Zon-o-phone

SUBSTITUTED FOR OUR GRAM-O-PHONE

SO MUCH SUPERIOR that we have abandoned our Gram-o-phone, including its name. The **Zon-o-phone** is the only legitimate disc (flat record) talking machine: protected by the allied patents of American Graphophone Co., Columbia Phonograph Co., National Gram-o-phone Corporation, Universal Talking Machine Co.

**WARNING.**—Parties who have recently attempted to trade in the Gram-o-phone, and reap the advantage of our prestige, have been enjoined. All others are warned as to the purchase and sale of machines bearing that name.

The **Zon-o-phone** records, by a newly discovered process, are incomparably superior to our Gram-o-phone records. **Zon-o-phones** and records for sale everywhere. Send for Catalogue.

**NATIONAL GRAM-O-PHONE CORPORATION, 874 Broadway, New York**  
**BRANCHES:** CHICAGO, 161 State. BOSTON, 178 Tremont. PHILADELPHIA, 18 North 9th. SAN FRANCISCO, Sherman Clay & Co.

Box 93. Waterbury, Conn.

Exhibit D.



*Exhibit 7.*

Metropolitan Magazine - September, 1900

Com  
Cit

**Zon-o-phone**  
Improved GRAM-O-PHONE

Our Latest Improved 1900 Model  
is substituted for the Gram-o-  
phone, which is abandoned, in-  
cluding its name. . . . .  
The rights of the ZON-O-PHONE  
are exclusive under the joint  
protection of the patents of . . .

NATIONAL GRAM-O-PHONE CORPORATION  
AMERICAN GRAPHOPHONE COMPANY  
COLUMBIA PHONOGRAPH COMPANY  
UNIVERSAL TALKING MACHINE CO.

which companies have made an agreement  
between themselves for legal protection  
and commercial advantage. All persons  
selling any style of disc machines other  
than the Zon-o-phone will be prosecuted.

**National Gram-o-phone Corporation,**  
Broadway, cor. 18th St., New York City.

*September 1900 Metropolitan*



"Exhibit G"

(Copy)

Frank J. Dunham  
President.

Orville D. La Dow,      WM. T. Hepper  
Sec'y & Gen'l Manager.      Asst. Tres.

NATIONAL - GRAM-O-PHONE  
CORPORATION.

cut  
of  
record

874 Broadway,  
Cor. 18, St.

New York, October 26th, 1900.

TO THE TRADE

IMPORTANT.

Dear Sir:--

*(Per letter of 10/20/00,  
Oct. 17, 1900,  
said to have  
been enclosed  
with this.)*

You are already aware that our Gram-o-phone has been abandoned, name and all, and that the Zon-o-phone has been substituted therefor. As conflicting statements are being circulated by unprincipled parties, in order to deceive and confuse you as to the real status of affairs, we have concluded to give you the facts which cover the relation of the Gram-o-phone to the trade.

They are as follows: Emile Berliner was granted a patent for a Talking Machine called the Gram-o-phone. He sold it to The United States Gram-o-phone Company, and stepped out.

The United States Gram-o-phone Company licensed to the Berliner Gram-o-phone Company of Philadelphia, and stepped out.

The National Gram-o-phone Company succeeded to the



Gram-o-phone business, and the Berliner Gram-o-phone Company stepped out.

Judge Lacombe, of the United States Circuit Court of New York, decreed the Gram-o-phone to be an infringement of the Graphophone Patents. This action had been anticipated, however, and there had been developed a new and greatly improved Machine, which was called the Zon-o-phone, and which Machine combined joint patents of the Columbia Phonograph Co., American Graphophone Co. Universal Talking Machine Co., and National Gram-o-phone Corporation.

We thus settled three points. (1). We abandoned the Gram-o-phone, in accordance with the injunction of Judge Lacombe. (2). We substituted in its place the most perfect Talking Machine of any, by combining the best features of all. (3). We settled forever the legitimate title of the Zon-o-phone, as the only Disc Machine that can be legally constructed and sold.

Thereupon the Berliner Gram-o-phone Company attempted to jump back unto the business. It was promptly enjoined from so doing by the United States Circuit Court of Virginia. Exit Berliner Gram-o-phone Company.

Then The United States Gram-o-phone Company attempted to jump back, and was promptly met by an injunction of the United States Circuit Court of West Virginia. Exit United States Gram-o-phone Company.



The Berliner Gramo-phone Company and the United States Gram-o-phone Company then attempted to combine, under the name of The Consolidated Talking Machine Company of America, and were promptly met by application of stockholders of the Berliner Gram-o-phone Company for a Receiver, and this combination was restrained.

Now comes the Consolidated Talking Machine Company "of America" omitted - the name under which Eldridge R. Johnson, the owner of a machine shop in Camden, New Jersey, who manufactured part of the Gram-o-phones up to the time that his business was interfered with by the United States Circuit Court. He is the manufacturer of the discredited Machine which we have abandoned--discredited because of the inferiority of his work which for years we have been obliged to admit, both to our disadvantage and shame.

We do not know what the remaining factor, Mr. Berliner will try to do, but it is a safe guess as to what will happen to him if he follows the example of the others.

This explanation necessarily involves personal references, which we regret. But our first duty is to enlighten our friends, so that they may understand the true situation, and to assure them that we are better prepared than ever to sell them goods, free from any taint of fear of results of patent litigation. Keep in mind that throughout all this patent litigation the National Gram-o-phone Corporation is free and clear.

Very respectfully,

NATIONAL GRAM-O-PHONE CORPORATION

By O.D. LaDow,

Secretary.



CIRCUIT COURT OF THE UNITED STATES  
For the Eastern District of Pennsylvania.

October Sessions, 1900, No.

In Equity.

Eldridge R. Johnson,  
Complainant.

vs.

National Gramophone Corporation,  
Defendant.

AFFIDAVIT OF ELDRIDGE R. JOHNSON

Commonwealth of Pennsylvania, )  
City and county of Philadelphia.) ss.

Eldridge R. Johnson, being duly sworn according  
to law deposes and says:-

I am the complainant in the above entitled suit  
against the National Gramophone Corporation which has its  
principal office and place of business in the City of  
New York, and is a ~~resident~~ citizen of the State of New  
York, and has a regular and established place of busi-  
ness in the City of Philadelphia, State of Pennsylvania,  
at #13 North Ninth Street. I am a resident of the City



of Philadelphia, State of Pennsylvania and have for a number of years last past been engaged in the manufacture of general and special machinery and machine parts of various descriptions and kinds at Camden, New Jersey. That in the year 1896 I began the manufacture, in connection with my general business, of motors for talking machines of the style known as Gramophones, and of other devices and parts relating to gramophones, my principal customer at that time being the <sup>Berliner</sup>~~National~~ Gramophone Company, which had its offices then at #1026 and 1028 Filbert Street in the said City of Philadelphia.

In the year 1896 I also began experiments looking to the improvement and perfection of the gramophone, and gramophone records and parts, and that since that time I have invented and patented many valuable improvements relative to the gramophone, and am now the owner of a large number of valuable patents for the same in the United States and foreign countries .

as  
Since 1896 from time to time, I have perfected the said various improvements I have embodied many of them in the commercial gramophone which I was manufacturing for the Berliner Gramophone <sup>Co.</sup>~~and~~ for other customers, and the gramophones as constructed and manufactured by me with these various patented improvements, became ~~the~~ standard commercial gramophone, and that since the Berliner Gramophone Company started in business in 1896 I have manufactured nearly all their gramophones and all the



gramophones which have been manufactured for the various gramophone companies in foreign countries, to the extent of many ~~hundreds of~~ thousands. My principal customer in this country has been the Berliner Gramophone Company, whose exclusive selling agent under contract dated October 10, 1896, was Frank Seaman of New York City, New York. Recently the said Berliner Gramophone company has been enjoined by the United States Circuit Court for the Western District of Virginia, in a suit by Frank Seaman against the Berliner Gramophone Company, ~~for~~ manufacturing, selling or dealing in, gramophones, gramophone records and goods except under certain conditions set forth in the decree of the said court, dated July 25, 1900, which decree restrains the said Berliner Gramophone Company temporarily from doing business.

I have among my customers for gramophones and gramophone records, which I am now manufacturing, in addition to the Berliner Gramophone Company, many other parties, concerns and corporations in this country and abroad, and have acquired a wide reputation and demand for my improved machines and records.

I have recently by reason of the growing and increasing demand for my said improved machines and improved records enlarged and extended my factory and provided increased facilities for manufacturing and selling talking machines and records and have recently been conducting this branch of my business under the name and



style of the Consolidated Talking Machine Company, in connection with my own name, and have extensively and largely advertised my said talking machine and records, for which, as hereinbefore stated, I have created a large demand, and for which there would be a very much larger and increasing demand were it not for the unjust and unlawful acts of this defendant ~~xxxxxx~~. I have expended over a hundred thousand dollars in my experiments, plants, machines and laboratory for manufacturing gramophones and records, and have now at my new factory and laboratory at 120 North Front Street, Camden, New Jersey, facilities for supplying the very large market which exists for this class of goods, for which I have built up a wide and enviable reputation. I have in my employ a large working force devoted to the manufacture and sale of gramophones, gramophone records and goods, and am obliged by reason of the character of the work to pay high salaries and wages to the skilled labor and talent which I necessarily must employ in the conduct of the said business.

Among the United States patents which I have obtained for my improvements in gramophones, are the following:-

No. 601, 198, March 22, 1898;

No. 624, 625, May 9, 1889;

No. 634, 944, October 17, 1899;

No. 650, 843, June 5, 1900;

No. 655, 556, August 7, 1900;

No. 655, 557, August 7, 1900;



I have pending in the United States Patent Office about thirty or more applications for patents for additional improvements relating to Gramophones and Talking Machines generally.

The defendant, the National Gramophone Corporation, which has an office at 874 Broadway, New York City, New York, was incorporated under the laws of the State of New York, on or about March, 1899, since that time it has been engaged in the sale of machines of the gramophone type, and other talking machines, and, as I am informed and believe, is still so engaged, but to what extent I am not informed. I am informed that the talking machines and talking machine records now sold by the defendant are manufactured by the Universal Talking Machine Company, of New York City, and that records are also pressed for the defendant by a company known as the Burt Company, of Milbourne, New Jersey, and that the talking machine goods, both the machines and records which the said defendant corporation is advertising for sale and putting upon the market are very inferior goods, and very inferior to the talking machines and records of this deponent. At one time the defendant, the National Gramophone Corporation, dealt in and sold the gramophones manufactured by me in large quantities, the said defendant being at that time the principal selling agent of the said Frank Seaman, the agent of the Berliner Gramophone Company, as hereinbefore set forth. That the said defendant is not now selling gramophones manufactured



for the said Berliner Company, and has not received any from the said Berliner Company since about May or June, 1900, but is now selling, as hereinafter set forth, a disc talking machine manufactured by the Universal Talking Machine Company, and styled by it the "Zonophone".

The said defendant company has copied, among other things, without license or right, and is selling in connection with its gramophones or "Zonophones," so called, your deponent's improved sound box patented to me by Letters Patent of the United States, No. 655,556 and No. 655,557, hereinbefore noted, in infringement and in violation of deponent's rights in the premises, for which infringement I have already brought suit against this defendant corporation, in this Honorable Court, which suit is now pending. Infringement suits are now pending in the United States Circuit Court for the Southern District of New York, and the Eastern District of Pennsylvania, brought by the said Berliner Gramophone Company, against this defendant, the National Gramophone Corporation, and against the Universal Talking Machine Company, to restrain the said defendants from infringing the Berliner patents for improvements relating to gramophones, which patents are alleged to be infringed by the said defendants by the manufacture and sale of the disc talking machine records manufactured and sold by them, and commonly known as the "Zonophone" and "Zonophone" rec-



ords; which said suits, as I am informed and believe, have recently been brought, and are still undecided. That while no suit has been brought against this deponent by the said Berliner Gramophone Company, or the United States Gramophone Company, for any alleged infringement of the said Berliner patents, this deponent, in the event of any final adjudication in the said suits sustaining the validity of the said Berliner patents will at all times be ready and willing to recognize the same, and to abide thereby, should the gramophones I manufacture and sell come within the scope of any such decision.

This present suit is a suit of a civil nature in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of two thousand dollars, and arising under the laws of the United States in accordance with the provisions and within the intent and meaning of the Act of Congress in such cases made and provided.

The said National Gramophone Corporation, which claims to own or control certain patents relating to talking machines, is not the owner and does not control any broad patents or <sup>my machines or records</sup> any patents which ~~mine~~ infringe; that if the defendant owns or controls any patents they are only for minor details of talking machine parts, which constructions I do not use. The said defendant has endeavored, and is now endeavoring to break up and destroy the gramophone business of this deponent and to drive him out of the gramophone business, and against



public policy, to suppress the competition which my manufacture and sale of gramophones and gramophone records and goods occasions by the publication in numerous monthly magazines, and in other publications, and by the circulation among the customers and agents of mine of circulars and letters addressed and mailed to said customers and agents, and by verbal threats and warnings, in and by which said customers and agents are falsely and maliciously informed that the gramophones and gramophone records of my manufacture, and of other "parties who have attempted to trade in the gramophones", and handled by said customers and agents, are by innuendo and misstatements stated to be infringements upon patents owned and controlled by the said National Gramophone Corporation, and warning all dealers and purchasers not to purchase disc talking machines of mine or of other manufacturers, falsely alleging that they are infringements of the patents owned or controlled by the said National Gramophone corporation, and threatening suit against all customers, dealers and agents who purchase gramophones from other manufacturers, including this deponent. Copies of some of which said notices are hereto annexed, marked Exhibits "A" "B" "C" "D" "E" "F" "G". I am the only manufacturer of gramophones or disc talking machines at the present time in this country, with the exception of the Universal Talking Machine Company, which Company manufactures for the said defendant, and the American Graphophone Company,



which manufactures in a small way a few cheap toy machines of the disc type, which two last mentioned companies are conspiring against this deponent with said defendant to destroy his said business. That the said unlawful warnings, advertisements and circulars of the defendant are therefore directed directly against me, and addressed to my customers and agents. The said notices of warning to my customers and agents falsely and maliciously state by innuendo that the gramophone and all parties manufacturing and using the same have been enjoined by the United States Circuit Court, which is not the fact. The fact is that the Berliner Gramophone Company alone has been enjoined temporarily, at the instance of Frank Seaman in the said Virginia suit, hereinbefore noted, from continuing an alleged breach of contract. The only patent with which the said defendant can claim to have any connection which has been before the United States Courts in any suit against the gramophone is Letters Patent of the United States No. 341,214, dated the fourth day of May, 1886, in the suit of the American Graphophone Company against Frank Seaman, and the National Gramophone Company, reported in 92 Federal Reporter, pg. 364, in which case the United States Circuit Court of Appeals for the second circuit, reversing the decision of the lower court, held that a Preliminary Injunction could not lie against the gramophone as there had never been any prior adjudication to warrant it. The said suit is still pending, and has not yet come to final



hearing. Subsequent to the date of the said decision of the United States Circuit Court of Appeals the said National Gramophone Corporation, the defendant, herein, being in collusion with the complainant, the American Graphophone Company, did cause a confessed decree to be entered against it in the said suit, without any hearing upon the merits of the case whatsoever, for the purpose, among other things, of trying to assist the cause of the American Graphophone Company against the gramophone, and against this complainant. No decree has been entered in the said case against the other defendant, Frank Seaman.

The business of the talking machine trade is mainly divided into two seasons, that the principal season, to wit, the season which included and embraces the Christmas trade, is now on, and that the defendant realizing this fact, knows that if by its advertisements and warnings it can intimidate this deponent's customers and agents from purchasing this deponent's goods at this particular time of the season, it will divert to itself practically the entire season's trade; if it can continue the said advertisements and warnings a few weeks longer its object will have been attained, as far as this season is concerned. Every day at this time that these advertisements and warnings of the defendant are continued means additional irreparable loss to this deponent. The said notices falsely and maliciously by in-



nuendo attempt to lead the public to believe that the Letters Patent of the aforesaid defendant owned or controlled by it have been sustained in a suit or suits against the gramophone in the United States Circuit Court, whereas the fact is that the gramophone has never been adjudged in any patent suit, at the instance of the said defendant, or any other party, to infringe any patent owned or controlled by the defendant, or by any other party. The said defendant by the said circulars and advertisements falsely and maliciously informs my customers and agents that the "Zonophone", the talking machine advertised by the defendant, is the only legitimate talking machine on the market, and threatens that my customers will be prosecuted.

Among other malicious circulars and advertisements published by the said defendant, is a circular letter dated Oct. 26, 1900, printed on the letter head of the National Gramophone Corporation, and signed "National Gram-o-phone Corporation, by O.D. LaDow, Secretary," addressed "To The Trade," and mailed, among others, to my customers and agents, slandering and vilifying me, and containing numerous false and malicious statements for the purpose of damaging and injuring me, and my business, and the continued circulation of which will, unless enjoined by this Honorable Court, irreparably damage and injure this deponent, which said circular letter is ready in court to be produced, a copy of which is hereto annexed, marked "Exhibit G".



The said defendant has never brought suit on its patents, if any it has, against this deponent or his customers or agents, or against any parties whatsoever, and I believe that it has no intention of doing so, but is merely circulating these false and malicious threats among the customers and agents of this deponent for the purpose of injuring and destroying my business, and, if possible, of acquiring to itself my business. The defendant has continued for many months last past the publication and circulation of said threats, hereinbefore referred to, addressed to my customers and agents for the purpose of breaking up my business in gramophones.

The threats of suit made against my customers and agents are not made in good faith, or with any intention of instituting suit against any such agents or customers, or against me as the manufacturer. The said defendant although it has issued many of said false and malicious threats through the mediums aforesaid, it has not specified any particular patent or patents which it owns or controls, and which it alleges are infringed by the gramophone. The threats of the defendant company against my customers and agents are rendered the more effective and harmful to ~~xxx~~ my business in that it has been stated by innuendo by the said National Gramophone Company



that I will endeavor to evade any guarantee which may be given by me to my customers and agents to protect them against suits for infringements which may be brought by the defendant.

The business of this deponent has been and is being greatly injured and tends to become destroyed by the said unlawful acts of the said defendant corporation, and that unless the said defendant is restrained by an injunction of this Honorable Court from continuing the said unlawful acts, and from circulating false and malicious statements my business will be irreparably injured and destroyed, and that on account of the character of said acts, done and threatened to be done, this deponent can have no relief at law.

The wording and character of the advertisements and warnings of the defendant complained of have misled the trade and and public generally into an erroneous belief that the manufacture and sale of gramophones, as well as gramophone records, has been so enjoined by the United States Circuit Courts that they cannot be manufactured or sold by this complainant, which applies also to the other goods use of ~~xxxxxxx~~ gramophone which this complainant has never been enjoined from using. Further the public and trade generally is led to believe by said advertisements that the gramophone has been withdrawn from the market, and that the "Zonophone" manufactured and sold by the defendant "is the only legitimate disc talking



machine"; and the trade and public generally by said advertisements and warnings have been led to believe that this deponent and the Consolidated Talking Machine Company, under which name he has been trading in the talking machine business, are violating decrees of the United States Court in manufacturing and selling gramophones, gramophone records and goods, which is not the fact .

Advertising for the Holiday season is now being rapidly pushed by the defendant company with a view of controlling as far as possible the Holiday trade, and if the defendant company is allowed to continue the advertisements and warnings complained of, great and irreparable damage will be done to the complainant and his Holiday trade, as well as his general trade will be irreparably damaged .

I believe that if the defendant is not restrained by a restraining order that within the next few days, or in the next <sup>four or five</sup> days ~~in~~ a large lot of defendant's advertising for the Holiday trade will have been circulated and distributed practically beyond recall . I am informed and believe that the defendant is about effecting arrangements to continue the advertisements complained of in the December issues of the monthly magazines, such as McClures, Scribner's, Munsey's, Review of Reviews Scientific American, Ladies' Home Journal Cosmopolitan, Public Opinion, and others, besides the weekly periodicals and papers. I am also informed and believe that the



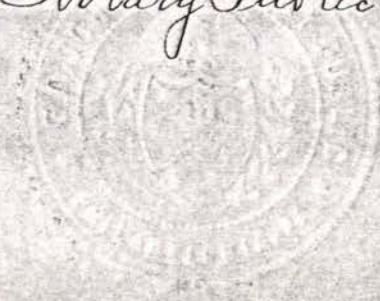
defendants are contemplating and intending to continue the publication of said warnings and advertisements complained of through the medium of circular letters, circulars, etc., such for instance, as those marked as Exhibits attached to the Bill of Complaint in this case, particularly referring to the character of circular letter, marked "Exhibit G".

I am informed and believe that the defendant herein is not financially responsible, and that during the past year the stock of the said defendant company has depreciated very materially, and has fallen during that period time from about eighty dollars per share to about thirty dollars per share, and this deponent is informed and believes that the stock of the said company is now selling below thirty dollars per share. This deponent believes that the said company is utterly unable financially to reimburse him for the <sup>m</sup> damages which he has suffered by reason of their illegal acts complained of, and that unless enjoined the damage which he will suffer will be very much greater, and irreparable, for which he has no adequate remedy at law.

*Edw. J. Lincoln*

Sworn and subscribed before me this *Sixth* day of November, A.D., 1900.

*G. A. Schwab*  
*Notary Public*





CIRCUIT COURT OF THE UNITED STATES  
For the Eastern District of Pennsylvania.

October Sessions, 1900, No.

In Equity.

Eldridge R. Johnson,  
Complainant.

vs.

National Gramophone Corporation,  
Defendant.

AFFIDAVIT OF LEON F. DOUGLASS.

Commonwealth of Pennsylvania I  
City and County of Philadelphia I ss.

Leon F. Douglass being duly sworn according law deposes and says as follows:

I have been connected with the talking machine business for many years last past, having been engaged a greater portion of the time in the business in Chicago, Illinois, but have during the past year moved to the City of Philadelphia, and am now engaged in the business in this City,

I am familiar with the Bill of Complaint in this case, and with the contents of the affidavit made by Eldridge R. Johnson for the purposes of Preliminary In-



junction and of restraining the defendant in this cause from doing the acts complained of in the Bill of Complaint; the said facts set forth in the said Bill of Complaint and in the said affidavit are true to the best of my knowledge and belief.

Among other branches of the talking machine business I am, and have been for a long time past, familiar with the advertisements, circulars notices, warnings etc. of the various talking machine companies, and particularly with the warning notices of the National Gramophone Corporation, complained of in the said Bill of Complaint, such as, for instance, the advertisements, copies of which are annexed to the said Bill, marked exhibits "A" "B" "C" "D" "E" "F" "G", and know that the effect of the said warnings upon the trade, with which I am in close touch, has been to greatly damage the business of the said Johnson, and that continuance of the said advertisements and warnings will further tend to greatly and irreparably damage his said business.

Since the month of *September*, 1900, I have been in the employ of the said Johnson as General Manager for him of his talking machine business, and, among other things, attend to the sale of goods, and correspondence with the trade. My former connection with the Talking machine business has placed me in a position to be in close touch with the pulse of the trade, and I know that



such advertisements, warnings and notices, as set forth in the exhibits referred to, have mislead the trade and public generally into an arroneous belief that the manufacture and sale of Gramophones has been so enjoined by the United States Courts that they cannot be manufactured, or sold by the Complainant, which applies also to the records for Gramophones; and further the public and trade generally is lead to believe that the Gramophone has been withdrawn from the market, and that the Zonophone, manufactured and sold by the defendant "is the only legitimate disc talking machine sold"; and the public and trade generally by said advertisements and warnings has been lead to believe that the said Eldridge R. Johnson, and the Consolidated Talking Machine Company, under which name he has been trading in the talking machine business, are violating decrees of United States Courts in manufacturing and selling Gramophones, Gramophone records and goods, which is not the fact.

I have had among other things, a large experience in connection with the advertising of Gramophone goods and talking machines goods generally; the advertising for the Holiday season is now being rapidly pushed in order to secure the Holiday trade by the different talking machine Companies and by the defendant Company, and that if the defendant Company is allowed to continue the advertisements and warnings complained of, great and irreparable damage will be done to the Complainant and in-



jure his Holiday trade very seriously and irreparably.

I believe from my knowledge of advertising that within the next few days, if the defendant is not restrained, the large bulk of its advertising for the Holiday trade will have been circulated and distributed, and practically beyond recall. Among other methods of advertising, the defendant has been accustomed to advertise the notices complained of in the monthly magazines, and I am informed from reliable source, and believe, that the defendant means to, and is about effecting arrangements to advertise the said notices in the December issues of said monthly magazines, such as McClures, Scribners, Munseys, Review of Reviews, Scientific American, Ladies' Home Journal, Cosmo<sup>politan</sup>, Public Opinion, and others, besides the weekly ~~periodicals~~ <sup>periodicals</sup> and papers. I am also informed, and believe, that the defendants are contemplating and intend to further publish the warnings and advertisements complained of through the medium of circular letters, circulars, etc. such for instance as those marked as exhibits attached to the Bill of Complaint, and particularly the circular letter marked "Exhibit G". The said Exhibit G was mailed to the Complainant's customers and the trade generally with another circular printed on the letter head of the American Graphophone Company, signed by the American Graphophone Company, E. D. Easton, President, both being enclosed in the one envelope <sup>and</sup> together addressed to <sup>one</sup> ~~the~~ customers, a copy



of which is hereto annexed. )

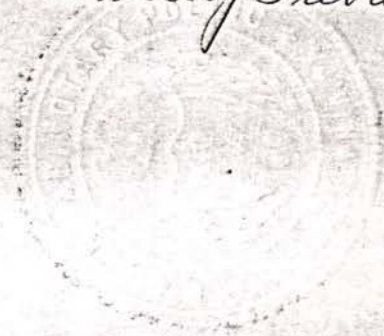
Leon F. Douglass

Summa subscribed to before me

This sixth day of November, 1900.

G. A. Schwab.

Notary Public





New York    London    Paris    Berlin    Chicago    St. Louis    Phila-  
delphia    Baltimore    Washington    Buffalo    San Francisco.

Telephone 1 Cortlandt.

Executive Offices

Cut  
of  
Factory.    AMERICAN GRAPHOPHONE COMPANY  
Columbia Phonograph Company, Sole Sales Agent.

Edward D. Easton	Directors.
Pres. & Gen'l. Manager	M. E. Lyle    Thos. R. White Jr.
M. E. Lyle,	
Vice Pres.	Andrew Devine    Philip Mauro.
Herbert A. Budlong,	
Executive Officer.	F. J. Warburton    Wm. H. Smith.
Wm. Herbert Smith,	
Treasurer.	E. D. Easton.    John J. Phelps.

R. F. Cromelin.

Office of the President.

135 - 137 Broadway.

New York City. Oct. 17 1900.

TO THE TALKING MACHINE TRADE:

Our attention has been directed to a pamphlet bearing the name of the Consolidated Talking Machine Company and describing a talking machine which is identical with that involved in the suit brought by this Company against the Gramophone and which has been enjoined by the Circuit Court of New York as an infringement.

This being apparently an attempt by the owners of the said machine to evade and shift upon others the responsibility for marketing an infringing device, we desire to inform all dealers that persons handling the same will



render themselves liable to suit by this Company for an  
injunction and damages.

AMERICAN GRAPHOPHONE COMPANY,

By E. D. Easton.  
President.



## October Sessions, 1900, No.

In Equity.

Eldridge R. Johnson,  
Complainant,

vs.

National Gramophone Corporation,  
Defendant.

AFFIDAVIT OF OLIVER JONES.

Commonwealth of Pennsylvania )  
 ) ss.  
City and County of Philadelphia, )

Oliver Jones being duly sworn according to law  
deposes and says as follows:--

I am and have been for some time past, in the employ of Eldridge R. Johnson, the Complainant herein, in connection with his manufacture and sale of Talking machines and talking machine goods, trading as the Consolidated Talking Machine Company, as a Clerk, and am familiar with the correspondence received by the concern relating to the manufacture and sale of Gramophone goods.



Since the National Gramophone Corporation, the defendant herein, has been publishing the noticed and warnings complained of, such as shown in Exhibits "A" "B" "C" "D" "F" "G" there has been received by us many letters from customers and dealers who have been misled by the said notices, and who have been lead to believe that the Complainant, Eldridge R. Johnson, and the Consolidated Talking Machine Company, have been and are enjoined from making and selling gramophones, and gramophone records, and that the gramophone has been withdrawn by decree of United States Courts from public sale generally. A sample of the many latters of this character received is one from Charles Leonard, of the Calafornia Tea Company, of Joliet, Illinois, which reads as follows:

"Joliet, Ill. Nov. 1st, 1900.

Consolidated Talking Machine Co.

Gentlemen:--

Enclosed please find ad. of U.S. Gramophone Co. taken from McClures. They also claim to be the "only" People. What do you advise. Can you send me a certified copy of the decision of the U.S. Court of Philadelphia, in regard to your right, to manufacture and sell Gramophones. We want to sell Gramophones and not Zonophones. But we don't want to get into trouble. Perhaps we had better wait until the matter is settled who is entitled to sell the genuine Gramophone. Please let me know at once what to do.

Yours etc.

C. Leonard."

noted

The advertisement from McClures, in the said letter, is identical with the advertisement published in Harpers Magazine of November 1900, a copy of which is annexed to this Bill, marked "Exhibit A".

Another sample of the many letters received by us of the character referred to is one of November 5th, 1900,



from J.F.S. Schmelzer & Sons, Arms Co. of Kansas City, Mo.

which reads as follows:--

Kansas City, Mo. Nov. 5, 1900.

Consolidated Talking Machine Co.,  
Philadelphia, Pa.

Gentlemen:-

We are in receipt of the enclosed notices from the National Zonophone Company and the American Gramophone Company, and as we are not looking for any more trouble than come to us in a regular business way, we would ask you what protection we would have from you in handling your machines. We do not, of course, wish to do anything to disobey the instructions of any Court, but wish to handle machines which are protected and which we can sell without any further trouble in regard to their sale.

Kindly let us hear from you in full regard to this matter and oblige,

Yours very truly,

J.F. Schmelzer & Sons Arms Co."

H.F.S-P

The notices referred to in the said letter above quoted enclosed therein are the circular letters of the National Gramophone Corporation (referred to in the letter erroneously "National Zonophone Company") a copy of which is annexed to this Bill of Complaint marked "Exhibit G", and the letter of the American Graphophone Company is the same as the letter of October 17th, 1900, referred to in the affidavit of Leon F. Douglass, a copy of which is attached to said affidavit.

The original of the letter referred to will be produced at the hearing.

In addition to the many letters received by us, of the character of the letters above quoted, many customers and dealers have come personally to our office under the impression, given by the said advertisements complained of, that the gramophone has been prohibited from general sale and use by the decree of Courts, and had been enjoined, and that the said Eldridge R. Johnson and the Consolidated Talking Machine Company, have been prohibit-

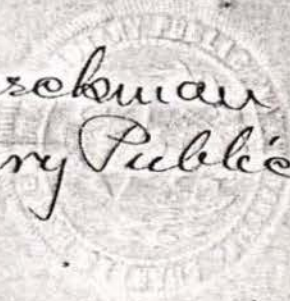


ed by decree of Court from making or selling the gramophone and gramophone records.

*Oliver Jones*

Sworn and subscribed before me this seventh day of November, 1900.

*Charles H. Hopkinson*  
*Notary Public*





## October Sessions, 1900, No.

Elbridge R. Johnson,  
Complainant.

**VS.**

National Gramophone Corporation,  
Defendant.

Commonwealth of Pennsylvania, )  
 ) ss.  
City and county of Philadelphia.)

I am and have been engaged for four or five years last past in the talking machine business, and at the present time am employed as salesman for Disc Talking Machines and records, and am very familiar with the trade, and have been familiar with it since I have been in the talking machine business. It is and has been my duty to travel all over the country in selling this class of goods, and come in contact with all the dealers and agents.



I am familiar with the character of advertising done by the National Gramophone corporation, as well as the advertising of other talking machine concerns, and am familiar with the advertisements, notices and warnings issued by the National Gramophone corporation, such as shown in Exhibits A, B, C, D, E, F, G, attached to the Bill of Complaint in the above entitled cause. I also know from my contact with the dealers and agents that the effect of the warnings, notices and advertisements of the National Gramophone Corporation has been to intimidate them from purchasing gramophones and disc talking machines and records from Eldridge R. Johnson, the complainant herein, and from the Consolidated Talking Machine Co. I have been selling disc talking machines and gramophones for the said Eldridge R. Johnson and Consolidated Talking Machine Co. since September last, and since the issuing of the advertisements and warnings complained of have found almost invariably difficulty in selling the goods, as the dealers and agents state that they have received notices and warnings from the National Gramophone Corporation that the gramophone has been enjoined, and that the Zonophone is the only legitimate talking machine, and that they understand from the said advertisements and warnings that the said Johnson has been restrained from making and selling gramophones or disc talking machines and records, and that they are afraid to



purchase from him lest the National Gramophone Corporation in accordance with the threats contained in the said notices and warnings brings suit against them for purchasing and selling Johnson gramophones and records. The said dealers and agents also believe from the character of the said warnings and notices that Johnson has been restrained from using gramophones and from advertising his goods as such; they also state that they understand from the said advertisements that decrees ~~maxxx~~ of the United States Circuit Courts have been entered in suits of the American Graphophone Company enjoining the public generally from making, selling or using gramophones or disk talking machines and records.

That in consequence of the said notices I have lost many concerns that I otherwise would have secured, and have since the issuing of the said notices and warnings experienced great difficulty in convincing the dealers and agents of the true state of affairs, and some of them in consequence of the said notices and warnings state that they will require security and indemnity against loss in the event of purchasing goods from the said Johnson.

*Courtland Shaw*

Sworn and subscribed before me this *ninth* day of November, 1900.

*Arthur Elitzsche*  
*Notary Public*





COPY

from

THE NATIONAL ARCHIVES

Record Group No. 21

U.S. Circuit Court  
Eastern District of Pennsylvania  
Equity No 25  
October Session 1900



(COPY)(

UNITED STATES CIRCUIT COURT.  
Eastern District of Penna.

-----  
ELDRIDGE R. JOHNSON,  
Plaintiff.

vs.

NAT. GRAMOPHONE COMPANY,  
Defendant.

-----  
Copy

ANSWER.

PHILIP MAURO,  
WALDO G. MORSE,  
Solicitors for Plaintiff.



Answers located  
at Edin Natural  
Historic Site  
Legal Boxes-



IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA.

ELDRIDGE R. JOHNSON,

Plaintiff,

-against-

In Equity.

THE NATIONAL GRAMOPHONE CORPORATION

Defendant.

ANSWER.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The National Gramophone Corporation, the defendant  
above named, saving and reserving to itself all and all  
manner of exceptions to the manifold errors contained in  
the bill for answer thereto, or to such parts thereof as  
it is advised, it is material and necessary for it to ans-  
wer, says:

1. The defendant admits to be true the first paragraph of  
said bill, saving that defendant does not admit that the  
Berliner Gramophone Company was the principal customer of  
complainant, but on the contrary alleges that said company  
was his only customer and that the complainant manufactured  
exclusively for, by, under and pursuant to the consent,  
orders and license of said company; and the defendant like-  
wise alleges that all the experiments described were made  
by, for and at the instance of said Berliner Gramophone  
Company, which paid for and controlled the same.

2. And the defendant admits the allegations contained in  
paragraph "2" of the complaint, excepting the allegation  
that gramophones were manufactured for others than the  
Berliner Gramophone Company, and alleges that all gramo-



phones manufactured by complainant and shipped to foreign countries were manufactured pursuant to the license, request, direction and authorization of said Berliner Gramophone Company; and likewise excepting the allegation that Frank Seaman was the exclusive selling agent of said Berliner Gramophone Company, alleging in that regard that said Seaman was the exclusive licensee, having the sole right to purchase, deal in, manufacture or cause to be manufactured gramophones, and to select, determine and fix the designs, kinds and prices thereof, all as in and by said contract will more fully and at length appear, and that pursuant to such contract goods manufactured by the complainant for the Berliner Gramophone Company were manufactured by, through and under the terms and provisions of said contract and in all respects subject thereto; and likewise that complainant has among his customers many other persons, concerns and corporations, and has acquired a wide reputation and demand for his improved machines and records, and alleges the fact to be that up to and including the granting of the injunction on June 25th, 1900, the complainant manufactured exclusively for said Berliner Gramophone Company and for said Frank Seaman under and pursuant to the terms of the said contract, and had no other customers and was authorized to manufacture for no other customer or person, and had no reputation and demand for his goods saving only and wholly subject and subordinate to the rights of said Berliner Gramophone Company and of said Seaman, and that the complainant had admitted and conceded, both by manufacturing under said patents and by expressly admitting <sup>the same;</sup> the validity, scope and breadth of the patents, so the property of the said Berliner Gramophone



Company and of said Seaman, and had likewise conceded and admitted the sole and exclusive right of said persons to use and employ the term or name "Gramophone" as a trade-name, trade-mark or designation.

3. Admits the allegations contained in paragraph "3" of said bill, saving that it alleges such enlarged and increased facilities, and such extension of such factory to have been had, made and required by and because of the manufacture of said goods as hereinbefore specified, and not otherwise, and that the complainant assumed the name or style "Consolidated Talking Machine Company of America," and likewise "Consolidated Talking Machine Company", without in anywise using his own name or causing the same to appear, unless he has so done very recently within a few days and not to the knowledge of this defendant, all of the advertisements which have come to the knowledge of defendant containing no reference to the name of complainant; and likewise excepting that said acts alleged on the part of this defendant are in anywise unjust or unlawful.

4. This defendant avers that it has no knowledge or information, or means of information concerning the allegations contained in paragraph "4" of said bill of complaint, save as aforesaid, and therefore demands strict proof of and concerning such allegations.

5. And this defendant avers that it has no knowledge or information concerning the allegations contained in paragraph "5" of said bill of complaint, and therefore demands strict proof of and concerning the same.

6. The defendant admits all of paragraph "6" of the bill of complaint, saving that it has been or is engaged in the sale of talking machines of other types, and that the same



are inferior goods, or in anywise inferior to the talking machines and records of complainant, and alleges the facts to be that the defendant succeeded to all of the rights, good will, assets and business of the National Gramophone Company, which had long been engaged in the gramophone business in connection with said Berliner Gramophone Company and Frank Seaman; and likewise that the goods, machines and records put out by the defendant are vastly superior in all respects to those manufactured by the complainant.

7. The defendant admits all of the allegations contained in paragraph "7" of the bill of complaint, saving that it was the selling agent of Frank Seaman and that said Seaman was selling agent of the Berliner Gramophone Company, and that the defendant is not now selling gramophones manufactured for the said Berliner Gramophone Company, and alleges the facts to be that the defendant was a trader in gramophones and gramophone goods, and that said Seaman was much more than selling agent for the Berliner Gramophone Company as is hereinbefore fully set forth, and that the defendant now has on hand a large stock of gramophones and gramophone records manufactured by the complainant herein for the Berliner Gramophone Company and Frank Seaman, aforesaid, and purchased and paid for by this defendant to said persons according to the course of business, as aforesaid.

8. The defendant denies that it has copied and is selling in anywise complainant's improved sound-box patented by complainant, and likewise denies that the sound-box dealt in by it is covered by or described in the patents set forth, and alleges that said patents do not contain,



nor does either of them contain, any description of an original or patentable device, discovery, machine or invention, and alleges that all of the claims in said patent contained were and are for devices, <sup>and</sup> discoveries long known and used prior to the manufacture, alleged discovery and invention thereof by complainant, both in the United States and elsewhere, and that the same were described in publications both in this country and in foreign countries prior to such invention, and that by reason of various other matters and things said patents are invalid and ineffectual and cannot be enforced against this defendant.

9. The defendant admits to be true the allegations contained in paragraph "9" of said bill of complaint and <sup>the reason why</sup> alleges that no suits have been brought by the companies specified therein against the complainant is because the complainant is acting in conjunction with said companies and collusively.

10. This defendant admits that the present suit is one of a civil nature, and that it arises under the laws of the United States in accordance with the provisions and within the intent and meaning of the act of Congress in such case made and provided, but denies that the matter in dispute exceeds, exclusive of costs, the sum or value of two thousand dollars.

11. This defendant denies all of the averments contained in paragraph "11" of said bill of complaint.

12. The defendant admits the publications and notices annexed to the bill and referred to in paragraph "12" thereof as exhibits A, B, C, D, E, F, and G, and that the same were published as advertisements and sent out by defendant; and likewise that the complainant and the Univer-



sal Talking Machine Company are the only manufacturers of gramophones or disc talking machines at the present time, and alleges that it has no knowledge or means of information regarding the manufacture alledged to be carried on by the American Graphophone Company; and this defendant denies all of the other allegations in said paragraph contained, and expressly and particularly denies that it has endeavored or is endeavoring to break up in anywise the business of complainant, or has specially circularized or sent advertisements or statements to his customers or agents, or any of them, <sup>as such</sup> or has made to them or nay of them any verbal threats or warnings whatever, or has falsely or maliciously done any act or thing whatever, or made any misstatements or innuendo, and that it has conspired or is conspiring with any person or corporation whatever against the complainant to destroy his business.

13. The defendant denies all of the allegations contained in paragraph "13" of the said bill of complaint.

14. The defendant denies each and every allegation in paragraph "14" of the complainant's bill contained.

15. The defendant denies all of the allegations contained in paragraph "15" of the said bill of complaint, but alleges that for the purpose of avoiding large liabilities and damages arising to itself and others by reason of the suits mentioned this defendant settled and compromised the same and allowed to be entered a decree adjudging its infringement, as alleged in the bill of complaint in said action, all of which was done honestly and in good faith, and in no wise for the purpose of injuring or prejudicing the complainant or any other person.



16. This defendant denies all of the allegations contained in paragraph "16" of the complainant's bill herein.

17. The defendant denies all of the allegations contained in paragraph "17" of the bill of complaint herein.

18. The defendant denies each and every allegation contained in paragraph "18" of the bill of complaint herein, saving only the publication of exhibit G. as hereinbefore admitted.

19. The defendant admits as alleged in paragraph "19" of said bill that it has never brought suit, but alleges that it intends so doing and that before the commencement of this action it and its counsel acting with them were preparing and had partially prepared papers for service upon the complainant and those selling and dealing in such goods, and this defendant alleges that only within a few weeks last past has it come to the knowledge of this defendant that the complainant was about to infringe and violate the patents and rights upon which such suits are prepared, and that this defendant immediately entered into consultation with the said counsel and instructed them to prepare with all diligence to protect its rights as aforesaid; and the defendant denies that it has published or caused to be published any circulars or made any threats as alleged in said paragraph, save as hereinbefore expressly admitted.

20. The defendant denies all of the averments contained in paragraph "20" of the bill of complaint herein, saving only that it admits having in the said publications specified no particular patent or patents which it is alleged are infringed.

21. The defendant denies all averments contained in



paragraph "21" of said bill.

22. The defendant denies all the averments contained in paragraph "22" of said bill.

23. For further defense this defendant alleges that the complainant has an adequate remedy at law for all and several the matters and things set forth in his complaint herein, and that the plaintiff does not require, nor is he entitled to equitable relief in or from this Honorable Court.

24. And the defendant further answering alleges that it had large quantities of gramophones, gramophone goods and records purchased by it as aforesaid from the Berliner Gramophone Company hereinbefore mentioned; that the complainant, as hereinbefore particularly set forth, manufactured for a number of years gramophones and gramophone goods solely for and under the license, consent and permission of said Berliner Gramophone Company, which said articles so manufactured were patented and known by the complainant to be patented and which patents existing upon such goods and giving the exclusive right to manufacture which were known to exist by the complainant, who during all such times manufactured under the same, acknowledged and declared the validity, scope and breadth thereof, and made improvements thereupon under and subject to such patents; handled, dealt in and with such machines so made and improved and stamped and marked with the patents aforesaid, and in every way from the inception of such business up to the 20th day of June, 1900, acquiesced in, manufactured under and in all ways acknowledged, confessed and affirmed the validity, scope and breadth of such patents.

25. That the machinery, tools, appliances and factory described in the complaint were made, developed in and



paid for by and through the production of goods for said Berliner Gramophone Company and under their direction and the license subject to said patents and rights therein of Frank Seaman aforesaid, and those who had purchased and should purchase gramophones and gramophone goods from them or either of them.

26. That during such time aforesaid the name and word "Gramophone", which was a coined word, was applied exclusively to the patented inventions aforesaid, and was used exclusively in and about the dealing in and sale of such goods so manufactured for and dealt in by said Berliner Gramophone Company, Frank Seaman and this defendant, and that the public acquiesced in, and recognized, maintained and affirmed such exclusive right to said name, trade-name or trade-mark designating such patented article.

27. That upon said 20th day of June, 1900, the complainant being engaged in filling an order for twenty-five hundred gramophones and likewise a very large number of records for said Berliner Gramophone Company manufactured as aforesaid under and pursuant to such patents so as aforesaid the exclusive property of said Berliner Gramophone Company and Frank Seaman, such patents being as follows: No. 372,786, dated November 8th, 1897, for a gramophone; No. 372,786, dated November 15, 1897, for a process of reproducing records of sound; No. 534,545, dated February 19, 1905, for a gramophone; No. 543,525, dated October 27th, 1905, for an improvement in sound records and method of making the same; and No. 534,536, dated July 25, 1896, for a gramophone; all of the same having been duly issued to one Emile Berliner giving the exclusive right for the term of seventeen years to him, his heirs and assigns, to make



(11) United  
use and vend within the State the inventions described in  
said letters patent, did cancel and allow to be cancelled  
a portion of such order, and having delivered thereupon  
eighteen hundred of said machines and a quantity of records  
ceased to deliver any more pursuant thereto.

28. That thereupon with the consent of and in collusion  
with the said Berliner Gramophone Company and in fraud of  
the rights of this defendant and others who had purchased  
such goods so made as aforesaid and had paid great royal-  
ties thereupon and therefor, and were engaged in selling  
and using and trading in the same, the said complainant  
wrongfully and unlawfully, first under the name of the  
Consolidated Talking Machine Company of America, a corpora-  
tion which had been organized in the month of June, 1900,  
and then under the assumed name of the Consolidated Talking  
Machine Company, proceeded to advertise and put upon the  
market the goods so as aforesaid made by him and other  
similar goods manufactured by and with the same appliances  
and under the same patents and methods, and did claim  
that such were the only true and genuine gramophones and  
gramophone goods.

29. And this defendant alleges that the kind, quality  
and design of the goods so as aforesaid made by the com-  
plainant and purchased and owned by defendant were so in-  
ferior and unsatisfactory that the defendant endeavored  
to obtain other and better goods, but was unable so to do  
by reason of the action of the said Berliner Gramophone  
Company, and that finally, being unable to purchase of  
satisfactory kind and quantity from said company or from  
said Seaman, this defendant purchased elsewhere talking  
machines and advertised the same, such machines being call-



X  
ed "Zonophones" and being of vastly better kind and quality than the gramophones made by complainant, and that this defendant recognizing the aforesaid proprietary right to the word "Gramophone, did not use the same in advertising any of its said machines, or call the same gramophones, but that on the contrary it kept the same distinct and separate from the large number of gramophones and gramophone records which this defendant as aforesaid had and has, <sup>and</sup> is selling and disposing of in its business as it is able so to do, but that, nevertheless, the said Berliner Gramophone Company and the United States Gramophone Company has brought an action against this defendant to restrain the use of the word gramophone even in its corporate name, which was first assumed when purchasing and dealing in gramophones as aforesaid, such action having been brought in the United States Circuit Court for the Southern District of New York and being now pending; and that likewise a suit has in like manner been brought in the United States Court for the Eastern District of Pennsylvania by said Berliner Gramophone Company against the complainant wherein it <sup>is sought to</sup> restrain the use of the said name by him, but that said suit is collusive and brought in bad faith and with no intention of prosecuting the same.

30. That likewise and in like manner the Consolidated Talking Machine Company <sup>of America</sup> as aforesaid by or for the use of which corporation a majority of the capital stock of the said Berliner Gramophone Company has been acquired, has brought an action against complainant herein for the purpose of enjoining and restraining the use of the name or designation Consolidated Talking Machine Company, but that said suit is also and likewise brought in bad faith



and with no intention of prosecuting the same.

31. That in actions brought in the United States Court for the Western District of Virginia and for the District of West Virginia and for the Eastern District of Pennsylvania, injunctions and restraining orders have been duly issued against the said Berliner Gramophone Company, the United States Gramophone Company and the Complainant, and that the same are still in force and effect, all as this defendant is informed and verily believes, and that the said Frank Seaman, complainant in said actions, is prosecuting the same to <sup>prevent</sup>  $\Delta$  and restrain the complainant herein and each of said corporations from making, using or selling gramophones or gramophone goods, or using the word gramophone; save for, to, for the benefit <sup>of</sup>  $\Delta$  and in connection with the business of said Frank Seaman, as in and by the contracts set forth in said suits and the patents alleged in the billd therein, and the trade-mark or trade-name likewise set forth fully and at length appears; and that by reason of the matters and things aforesaid, and the connection of the complainant herein with said business, patents and rights said Seaman will be successful, as this defendant is advised, informed and verily believes in regard to said facts and results.

32. That also and likewise this defendant alleges that heretofore and on or about the 6th day of April, 1900, it secured by virtue of a certain contract or agreement of license made by the American Graphophone Company as the sole <sup>pho</sup>  $\Delta$  owner of the same; and acquired by, through and in connection with the Universal Talking Machine Company an exclusive license to manufacture, use and sell talking machines such as are made and dealt in by complainant and by the Universal



Talking Machine Company and by this defendant. That such exclusive license was so granted by the American Graphophone Company and acquired by and for this defendant as aforesaid under and by virtue of letters patent of the United States Nos. 341,214 and 341,228, respectively, both dated May 4th, 1985.

33. And this defendant further says that by reason of the matters and things aforesaid and such patents so owned and controlled by the said Frank Seaman and Berliner Gramophone Company, and of the said patents so owned and controlled by this defendant and under which this defendant has exclusive license to make, use and vend machines, as aforesaid, and by reason of various other patents and of the state of the art of manufacturing and using talking and sound-reproducing machines and devices, the patents set forth in the bill of complaint herein are of no force or validity, and that the complainant has not the right to make, use or vend talking machines under or pursuant thereto, or in talking machines which use or employ the patents so as aforesaid owned or controlled by, for or for the use and benefit of this defendant, or under which it has purchased machinery and appliances.

34. The defendant further answering alleges that it has made, published and put forth all of said circulars, announcements and advertisements in good faith and justly, and that the complainant in bad faith and unjustly and intending to mislead and prejudice the public and the customers of this defendant, and likewise to prejudice this defendant, has wrongfully and against the mandate of the Courts of the United States, as aforesaid, and against the rights of the parties aforesaid and of this defendant,



advertised and caused to be advertised the gramophones so as aforesaid made by him in the manner specified, and has issued circulars, catalogues, and has caused to be printed and circulated advertisements and publications claiming that the complainant is and has been the sole owner and exclusive manufacturer of the gramophone for many years last past, and is now continuing the business formerly carried on by him, and has assumed the name "Consolidated Talking Machine Company" for the purpose of further deceiving and misleading the public.

35. That this defendant and the National Gramophone Company, to the rights whereof this defendant succeeded, have spent and caused to be spent in advertising, promoting and building up the name "Gramophone" and the reputation of the gramophone and the business of this defendant in selling gramophones and gramophone goods vast sums of money aggregating upwards of two hundred thousand dollars, and has built <sup>up</sup> and established the market therefor and was forced to abandon the use of such name and to purchase other and different machines through the collusive and fraudulent action of said Berliner Gramophone Company and the complainant herein, and that, as aforesaid, when the said Berliner Gramophone Company had been enjoined from selling said goods, save to Frank Seaman from whom this defendant was accustomed to buy the same, the complainant did, as aforesaid, immediately take up the business of said Berliner Gramophone Company where it had abandoned the same upon said injunction, and did likewise take into his employment the employees of the said company and to continue the business thereof as aforesaid in spite of said injunctions;



and that a motion is now pending, and at the time of the beginning of this action was pending, as this defendant is informed and verily believes, to further restrain said complainant in the premises.

36. And the defendant further answering alleges that now, and at the commencement of this action the complainant was and is, a citizen and inhabitant of the State of Pennsylvania, and this defendant was a corporation duly organized under the laws of the State of New York, and was and is a citizen, resident and inhabitant of the State of New York, and was not and is not a citizen, resident or inhabitant of the State of Pennsylvania, or of the Eastern District of said State; that the summons in this action was served on this defendant's agent in the State of Pennsylvania where this defendant has an office, said agent being only its legal managing agent of its business in Philadelphia, and this defendant says that it is not subject to be sued or to be summoned by original process out of this Court in this cause in this Judicial District.

37. And this defendant denies all and all manner of unlawful combination and confederacy where it is by the said bill charged; without this, there is any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed, with its



reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) Philip Mauro

(Signed)

Russell Duane  
of Counsel

(Signed) Waldo G. Morse

Solicitor for Defendant

COUNTY OF PHILADELPHIA, :

: SS:

STATE OF PENNSYLVANIA, :

ORVILLE D. LADOW, being duly sworn, deposes and says that he is the *Secretary* of the National Gramophone Companation, the defendant above named, and that the matters and things set forth in the foregoing answer are true and correct in so far as they are within his own knowledge and in so far as they are not within his own knowledge, he believes them to be true.

(Signed) Orville D. La Dow

Sworn and subscribed to before me this  
12<sup>th</sup> day of November, A. D., 1900.

(Signed) S. Salome Brooke  
(Seal) Notary Public



## CIRCUIT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania.

ELDRIDGE R. JOHNSON,  
*Complainant,*

v.

NATIONAL GRAMOPHONE CORP'N.  
*Defendant.*

October Sessions, 1900,

No. 25.

In Equity.

## "Defendant's Exhibit N."

This cause coming on to be heard on motion for preliminary injunction on bill of complaint and affidavit on behalf of complainant and on answer and affidavits on behalf of defendant, and counsel for the respective parties having been heard, it is hereby ordered, that a Preliminary Injunction issue forthwith in accordance with the prayers of the Bill of Complaint restraining the said defendant, the National Gramophone Corporation, its servants, agents, employees, and all other persons claiming to act under its authority, until final hearing of this cause, from directly or indirectly writing, publishing, declaring, delivering, distributing or circulating, save as hereinafter specified, any circulars, letters, advertisements, warnings or notices whatsoever stating directly, or by indirection, that the gramophone or the talking machines or records such as are manufactured by complainant have been enjoined, or that the complainant has been enjoined from manufacturing or selling gramophones or talking machines or records therefor, or goods thereto pertaining, and from advertising, declaring or publishing in any way that the gramophone has been withdrawn except by the defendant

Seen by Johnson Oct 1900 No 20



or others by description or name who have actually discontinued its use or sale or that the defendant's machine is the only legitimate disc talking machine excepting when accompanied with the claim that other machines are infringements of defendant's exclusive rights. This order is not to be construed as preventing the defendant from giving or publishing warning that it claims the gramophones manufactured by others are infringements of its exclusive rights.

GEO. M. DALLAS,

November 13 1900.

Cir. Judge.



CIRCUIT COURT OF THE UNITED STATES  
For the Eastern District of Pennsylvania.

October Sessions, 1900, No.

In Equity.

Eldridge R. Johnson,      Complainant,

vs.

National Gramophone Corporation,  
Defendant.

This cause coming on to be heard on motion for preliminary injunction on bill of complaint and affidavits on behalf of complainant and on answer and affidavits on behalf of defendant, and counsel for the respective parties having been heard, it is hereby ordered, that a Preliminary Injunction issue forthwith in accordance with the prayers of the Bill of Complaint restraining the said defendant, the National Gramophone Corporation, its servants, agents, employees, and all other persons claiming to act under its authority, until final hearing of this cause, from directly or indirectly writing, publishing, declaring, delivering, distributing or circulating, save as hereinafter specified, any circulars, letters, advertisements, warnings or notices whatsoever stating directly, or by indirection, that the gramophone or the



talking machines or records such as are manufactured by complainant have been enjoined, or that the complainant has been enjoined from manufacturing or selling gramophones or talking machines or records therefor, or goods thereto pertaining; and from advertising, declaring or publishing in any way that the gramophone has been withdrawn except by the defendant or others by description or name who have actually discontinued its use or sale, or that the defendant's machine is the only legitimate disc talking machine excepting when accompanied with the claim that other machines are infringements of defendant's exclusive rights. This order is not to be construed as preventing the defendant from giving or publishing warning that it claims the gramophones manufactured by others are infringements of its exclusive rights.

Nov. 13, 1900.

Wm. H. Dallas.

C. H. K. K.



National Archives  
Record Group No. 21  
U.S. Circuit Court -  
Eastern Dist. of Pa.  
Equity No 25. Oct Sess. 1800